



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 20, 1997

Mr. John Dewey
City Attorney
Office of the City Attorney
City of Lake Jackson
5 Oak Drive
Lake Jackson, Texas 77566-5289

OR97-2539

Dear Mr. Dewey:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 111028.

The City of Lake Jackson (the "city") received a request for information "regarding franchise issues and/or the litigation" related to *Cities of Wharton vs. Houston Lighting & Power*, Cause No. 96-016613, in the 127th Judicial District Court of Harris County, Texas. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.


Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The system must meet both prongs of this test for information to be excepted under section 552.103(a). Section 552.103(a) is applicable only where litigation involves or is expected to involve the governmental body claiming the exception. Open Records Decision No. 132 (1976). Here, although you have shown that there is pending litigation involving the cities of Wharton, Pasadena, and Galveston against Houston Lighting and Power Company, you have not argued or otherwise shown that litigation specifically involving the City of Lake Jackson is pending or reasonably anticipated. Therefore, the city may not withhold the requested information under section 552.103(a).

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 (1990) at 5. When communications from attorney to client do not reveal the client's communications to the attorney, section 552.107 protects them only to the extent that such communications reveal the attorney's legal opinion or advice. *Id.* at 3. In addition, basically factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.*

You have not established, nor is it apparent from the face of the submitted documents that an attorney-client relationship exists between the city and Houston Lighting and Power Company. We therefore conclude that the requested documents may not be withheld from disclosure under section 552.107.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/gle

Ref.: ID# 111028

Enclosures: Submitted documents

cc: Mr. Roy Camberg
The Camberg Law Firm
17225 El Camino Real, Suite 210
Houston, Texas 77058
(w/o enclosures)